

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

**HEARING DATE: April 28, 2015**  
**HEARING TIME: 10:00 a.m.**

In re

OSO PROPERTIES, INC.,

Debtor.

X  
: Case No. 15-10673 (SHL)  
:  
:  
: (Chapter 11)  
:  
: NOTICE OF MOTION  
:  
X

PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying memorandum of law, William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), will move this Court before the Honorable Sean H. Lane, Bankruptcy Judge, in the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 on April 28, 2015 at 10:00 a.m, or as soon thereafter as counsel can be heard, for an order converting or dismissing this Chapter 11 case, and for such other and further relief as this Court may deem just and proper. The original application is on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and personally served on the United States Trustee, at 201 Varick Street, Room 1006, New York, New York 10014, to the attention of Paul K. Schwartzberg, Esq., no later than three (3) days prior to the return date set forth above. Such papers shall conform to the Federal Rules

of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York  
April 2, 2015

WILLIAM K. HARRINGTON  
UNITED STATES TRUSTEE

By: /s/ Paul K. Schwartzberg  
Paul K. Schwartzberg  
Trial Attorney  
201 Varick Street  
Room 1006  
New York, New York 10014  
Tel. No. (212) 510-0500  
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**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE IN SUPPORT OF  
MOTION TO CONVERT OR TO DISMISS THIS CHAPTER 11 CASE**

TO THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), does hereby make this motion (the “Motion”) pursuant to 11 U.S.C. § 1112(b) for an order converting or dismissing this Chapter 11 case. In support thereof, the United States Trustee represents and alleges as follows:

**Introduction**

The sole asset of the Debtor’s estate is real property located at 852 East 213<sup>th</sup> Street, Bronx, New York (the “Property”). The Property was transferred, without court order, to the Debtor from the bankruptcy estate of Osondu Ibom, Case No. 14-12915 (SHL) (the “Ibom Case”). This Court subsequently ordered the Debtor to transfer the Property back to the bankruptcy estate in the Ibom Case. Accordingly, because the Debtor has no assets to reorganize, this case should be converted to chapter 7 or dismissed.

## **Facts**

### **General Background**

1. The Debtor commenced this case by filing a voluntary petition (the “Petition”) on March 20, 2015. ECF No. 1.
2. The Debtor has continued in possession of its assets.
3. Because of the lack of creditor interest, the United States Trustee has been unable to form a committee of unsecured creditors in this case.

### **The Property**

4. The Debtor lists in its bankruptcy schedules that the Property is its sole assets. Id. at Bankruptcy Schedules A and B.
5. As set forth above, the Property was transferred, without court order, to the Debtor from the bankruptcy estate in the Ibom Case. See Motion for Contemp in Ibom Case, Docket No. 34.
6. As a result of the unauthorized transfer of the Property, the Court ordered that the Property be transferred back to the estate in the Ibom Case. See Order in Ibom Case, Docket No. 38.

## **Argument**

### **Cause Exists to Convert or Dismiss this Case**

Section 1112(b) of the Bankruptcy Code describes a variety of factors which may constitute "cause" for the conversion of a Chapter 11 case to a Chapter 7 case or dismissal of a case. See 11 U.S.C. § 1112(b). Under this provision, the court may find cause in the following circumstance:

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.

See 11 U.S.C. § 1112(b)(4)(A).

Section 1112(b) requires a court to convert or dismiss a case if the movant establishes “cause.” 11 U.S.C. § 1112(b)(1). As set forth above, the United States Trustee has demonstrated cause under § 1112(b)(4)(A).

**The Debtor Has Substantial and Continuing Losses**

As noted in paragraphs 4 through 6 herein, the Court has ordered the Debtor to transfer the Property, its sole asset, back to the bankruptcy estate in the Ibom case. Accordingly, the Debtor will not only suffer a substantial and continuing loss, but does not have any assets in which to confirm a plan of reorganization. Therefore, because of the Debtor’s losses and the fact that it cannot confirm a plan, cause exists for the conversion or dismissal of this case. See 11 U.S.C. § 1112(b)(4)(A)(substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation); see also Sullivan Cent. Plaza I, Ltd., v. BancBoston Real Estate Capital Corp. (In re Sullivan Cent. Plaza I, Ltd.), 935 F.2d 723, 728 (5<sup>th</sup> Cir. 1991)(cause for conversion found where principal asset removed from estate through foreclosure sale after relief from stay granted).

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order converting or dismissing this Chapter 11 case, and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York  
April 2, 2015

Respectfully submitted,

WILLIAM K. HARRINGTON  
UNITED STATES TRUSTEE

By: /s/ Paul K. Schwartzberg  
Paul K. Schwartzberg  
Trial Attorney  
201 Varick Street  
Room 1006  
New York, New York 10014  
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